IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION.

WRIT PETITION No.1913/2003.

Fancy Corporation Limited ..Petitioner.

V/s.

Girdhari Mangru Yadav **..**Respondent.

Mr M. M. Madan for the Petitioner.

Mr N. M. Ganguli for the Respondent (reporting no instructions.)

CORAM: V.C. DAGA,J.

DATED: 29th March,2007.

JUDGMENT.

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1. Heard learned counsel for the petitioner. Perused petition.

2. In this petition, the petitioner has challenged the impugned order of the Labour Court in Application (BIR) No. 740 of 1984 dated 25th April, 1995 and the common order passed by the Industrial Court dated 7th January, 2003 in Appeal (IC) No. 69 of 1995 and, inter-alia, prayed that the said orders be quashed and set aside and the punishment of dismissal inflicted upon the respondent by the order of dismissal dated 14.5.1984 be upheld and confirmed.

FACTS:-
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3. The factual matrix reveals that the petitioner is a Company registered under the Companies Act, 1956, which had a factory at Kalachowky, Mumbai and now same has been closed down.

4. The petitioner was engaged in doing machine embroidery work on cloth in it's factory. The factory being a textile industry, it was covered under the Bombay Industrial Relations Act, 1946.(for short, "the BIR Act").

5. The respondent was employed in the Embroidery Department. He was supposed to give specified output of production on the machine on which he was working.

6. The respondent during 3rd April, 1984 to 17th April, 1984 deliberately resorted to go slow tactics and thereby he gave less production. A charge - sheet alleging misconduct for resorting to go-slow tactics; as required under the Standing orders of the

petitioner-Company was attempted to be served on the respondent. The respondent, however, refused to accept the charge-sheet. However, he was verbally informed that the Departmental Enquiry was scheduled on 23rd April, 1984 at 2.00 P.M. to investigate into the said charges levelled against him. He remained absent.

7. The Factory Manager, after taking into account past service record of the respondent, which revealed that, he was warned on six times for absence of duty; three times for disobedience; four times for giving less production; and without showing any remorse and/or regret again determined to continue a same tactics and indulged in the act of giving less production resorting to go slow tactics resulting in setting up bad example for others as such came to the conclusion; that considering gravity of the misconduct the respondent should be dismissed from the services. Accordingly, notice of proposed punishment was given and ultimately, respondent came to be dismissed from service.

8. It appears that, according to the terms and the specific clause in the settlement reached with the Union, action of dismissal, discharge and retrenchment was required to be taken after prior consultation with the Union. Hence, in the instant case, the petitioner-employer placed all the documents before the Union. The Union was satisfied that action of the petitioner was not by way of unfair labour practice. Accordingly, the dismissal notice dated 14.5.1984 was served on the respondent. Thereafter, he came to be dismissed from the service.

9. The respondent challenged the order of dismissal before the Labour Court by filing Application (BIR) No. 740 of 1984 and claimed relief of reinstatement with full backwages and continuity of service.

10. Petitioner employer resisted the application through written statement and defended it's action on the various grounds and also filed additional written statement in support of it's defence.

11. The Labour Court after hearing parties was pleased to hold that the Departmental Enquiry was fair and proper and that the findings of the misconduct reached by the Enquiry Officer were not perverse. However, the Labour Court interfered with the punishment of dismissal holding it to be disproportionate to the act of misconduct. Consequently, directed reinstatement with 50% backwages w.e.f. 15.4.1994 to 30.1.1990 and also held that the respondent was entitled to all the consequential benefits from the petitioner-employer under Voluntarily Retirement Scheme (VRS), which were given to the other employees of Kalachowky Factory Unit under VRS scheme. However, prayer of the respondent for reinstatement came to be rejected holding it to be not possible and practical in view of the closure of the Unit. The 50% backwages were denied to the workman-respondent for the proved misconduct and also in view of his admission that he was getting income from Tea Stall.

12. Being aggrieved by the aforesaid order of the Labour Court, the petitioner-employer

filed appeal under Section 84 of B.I.R. Act, 1946 before the Member, Industrial Court at Mumbai, bearing Appeal (IC) No. 69 of 1995. The respondent had also filed appeal before the Industrial Court being Appeal (IC) No. 78 of 1995. The Industrial Court confirmed the order of the Labour Court dated 25.4.1995 with regard to the relief of setting aside dismissal order dated 14th May, 1984. However, interfered with the said order with regard to the other reliefs and substituted it by its own order holding that the employee was entitled to receive 50% backwages w.e.f 14.5.1984 till completion of superannuation age 60 years, with other benefits. The petitioner-employer was directed to pay arrears within a period of two months from the date of the order.

SUBMISSIONS:-

13. The learned counsel appearing for the petitioner urged that the impugned orders of the courts below are contrary to law, equity and good conscience and they are required to be set aside.

14. The learned counsel for the petitioner

urged that the courts below have exceeded their jurisdiction vested in them. In his submission, they should not have interfered with the punishment, especially, when the charge of go-slow was proved beyond doubt and that the order of dismissal was passed after taking into account past conduct of the workmen. He further submits that the Labour Court travelled into unchartered area of discussion, which was not relevant or germane to decide the question of proportionality of the punishment of dismissal and committed an error in holding that the punishment was shockingly disproportionate to the misconduct proved. In his submission the findings in this regard were recorded by both the authorities below without giving any specific reason for reaching to such conclusion and without there being any logical discussion or any indication indicating process for reaching such conclusion.

15. The learned counsel, thus, submits the conclusions reached by the Labour Court, and affirmed by the Industrial Court are arbitrary and perverse as such liable to be quashed and

set aside. He further urged that both the Courts below have accepted that the past service record of the respondent was unsatisfactory, inasmuch as he was inflicted with mild punishments in the past for similar and other misconducts by adopting reformative approach thinking that the respondent would improve his ways and not give any cause for complaint in future. However, the respondent taking advantage of the leniency shown to him,he went on to resort to go slow tactics which, ultimately, proved to be harmful to the Industry of the petitioner, a Sick Unit. The learned counsel for the petitioner, thus, took a strong exception to the orders of the courts below and prayed for setting aside the said orders.

16. When this matter was called out for hearing on 12.2.2007, Mr. N. M. Ganguli, learned counsel for the respondent had sought time to work out this matter amicably out of the Court. Accordingly two week's time was granted.

17. The matter thereafter appeared on board

for hearing on 5.3.2007. Mr. Ganguli, learned counsel for the respondent remained absent. He was summoned by the Court to argue this matter, However, he did not appear.

18. The learned counsel for the petitioner was heard. The matter was kept part-heard and adjourned to 6.3.2007 since the court time was over. However, while adjourning the matter specific request was made to the Advocate for the petitioner to inform Mr.Ganguli that the matter is part heard and same would be heard on next day i.e. on 6.3.2007.

19. Mr. N.M. Ganguli did not appear on 6.3.2007. When Mr Ganguli appeared in some other matter, he was asked the reason for his absence. He informed this Court that he had no instructions to appear on behalf of his client. Consequently, the case was closed for judgment.

20. The learned counsel for the petitioner, at this stage, after taking instructions from his client present in the Court, fairly stated that even if the petition is allowed, the

petitioner would have no objection to pay Rs. 50,000/- to respondent as ex-gratia payment; since the petitioner has already deposited Rs. 1,17,671.00 in this Court, in compliance with the order of this Court dated 5th January, 2004, while admitting the petition and that the investment has earned good amount of interest. As such, the petitioner would not mind if Rs. 50,000/- (Rupees Fifty Thousands only) are given to the respondent; even if the petitioner succeeds in the petition. He prayed that the balance amount lying with this Court with interest earned thereon be returned to the petitioner after deducting amount of Rs. 50,000/-. When this statement came from learned counsel appearing for the petitioner, he was directed to file pursis on record under the signature of his client. Accordingly pursis is filed and the same is taken on record.

CONSIDERATION:-

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21. Having heard the learned counsel for the petitioner, perusal of the counter affidavit filed by the respondent and impugned orders of

the Courts below, it is not in dispute that the enquiry conducted against the respondent was fair and proper. Principles of natural justice were followed. Fair opportunity was given to respondent and the findings recorded by the Enquiry Officer were found not perverse by both the courts below. The said findings were not the subject-matter of the challenge, at the instance of the respondent in any of the proceedings. In this view of the matter, the said findings have become final and conclusive between the parties.

22. It is not in dispute that the past record of the respondent reveals that he was warned six times for absence on duty, three times for disobedience and four times for giving less production. Instead of showing remorse and regrets, the respondent indulged in go-slow tactics. The Labour Court has not given any reason as to why the said punishment, in it's opinion was shockingly disproportionate. No cogent reasons are given in support of the findings recorded by the Labour Court which were later on affirmed by the Industrial Court. The past bad record of

the respondent was not in dispute. Under these circumstances, if the Management has inflicted punishment of dismissal, that too, after obtaining concurrence of the Union, it was not open for the Labour Court to interfere with the said order of dismissal. In my considered view, it was not open for the Labour Court to trade into the field which was not available to it to do so in the facts and circumstances of this case. It is needless to mention that any adverse findings have to be backed by reasons. Reasons given must be cogent reasons while setting aside the order of dismissal.

23. In the case of **Bharat Sugar Mills reported in 1961 II LLJ 644**, the Apex Court was pleased to observe that the misconduct of go slow is a more pernicious act than that of resorting to strike and it has also held that the punishment of dismissal would be proper when misconduct of go-slow was proved.

24. According to the petitioner, this case was cited before the courts below, however, none of the courts have made reference to the

said judgment or dealt with the same. The Supreme Court has observed, as under:-

> "go - slow which is a picturesque description of deliberate delaying of production by workmen pretending to be engaged in the factory is one of the most pernicious practices that discontented or disgrunted workmen some time resort to. It would not be far wrong to call this dishonest, for while thus delaying production and thereby reducing the output, the workmen claim to have remained employed and thus to be entitled to full wages. Apart from this also, "go slow" is likely to be much more harmful than total cessation of work by strike. For, while during a strike much of the machinery can be fully turned off during the "go slow" the machinery is kept going on a reduced speed which is often extremely damaging to machinery parts. For all these reasons "go slow" has always been considered a serious type of misconduct".

25. In another judgment of this Court in the case of **Sonaba Baburao Dalvi vs. Factory Manager, Raja Bahadur Motilal Mills Ltd reported in 2000 I CLR p. 307** which was also the case under the BIR Act the relevant observations of this Court are reproduced as under:-

> "If from the evidence and material on record in the enquiry which is confirmed as fair and proper the only conclusion which can be drawn is that the production given by the petitioner was lower than the production given by the others and it was less than 8500 ends. It cannot be said that there was absolutely no material to show that the production given by the petitioner was lower than the production given by the others. The petitioner has not denied or refuted the figures of production produced by the respondent company before the Enquiry Officer. The net result which we have to see is the figures of the low production on the record of the enquiry. Therefore, High Court held that the respondent company was justified in dismissing the petitioner from employment."

26. Courts below have also failed to appreciate that they were required only to judicially review the action of the petitioner and not to sit as Court of appeal over the

action of the petitioner. It is also trite law that where a departmental enquiry is held to be fair and proper and the findings of the enquiry officer are also held to be legal, proper and not perverse, the Management is invested with the discretion to impose appropriate punishment keeping in view the magnitude and gravity of misconduct. In this connection the petitioner rightly referred to the observation of the Apex Court in the case of **B.C. Chaturvedi V. Union of India reported in 1996 I CLR page 384,** reading as under:-

> "Judicial review is not an appeal from a decision but a review of the manner in which the decision is made. Power of judicial review is meant to ensure that the individual receives fair treatment, and not to ensure that the conclusion which the authority reaches is necessarily correct in the eyes of the Court. When an enquiry is conducted on charges of misconduct by a public servant, the Court/Tribunal is concerned to determine whether the enquiry was held by a competent authority or whether rules of natural justice are complied with. When the findings and conclusions are based on some evidence, the authority entrusted with the power to hold inquiry has jurisdiction, power and authority to reach a finding of fact or conclusion."
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> . "The Court/Tribunal in its power of Judicial review does not act as appellate authority to re-appreciate the

evidence and to arrive at its own independent findings on the evidence."

. "A review of the above legal position would establish that the disciplinary authority and on Appeal the Appellate Authority being fact finding authorities have exclusive power to consider the evidence with a view to maintain discipline. They are invested with the discretion to impose appropriate punishment keeping in view the magnitude or gravity of the misconduct. The High Court/Tribunal, while exercising the power of judicial review, cannot normally substitute its own conclusion on penalty and impose some other penalty. If the punishment imposed by the disciplinary authority or the appellate authority shocks the conscience of the High Court/Tribunal."

27. The learned counsel for the petitioner has also rightly relied on the case of the **New Shorrock Mills Vs. Maheshbhai T Rao (reported in 1997 I CLR, page 13),** which was also decided under the provisions of the BIR Act, the Apex Court has observed as under:-

"The Labour Court was exercising jurisdiction under Section 78 of the Bombay Industrial Relations Act. It has the jurisdiction, inter alia, to decide the disputes regarding the propriety and legality of an order passed by an employer acting or purporting to act under the Standing Orders. The Labour Court, in the present case, having come to the conclusion that the finding of the departmental enquiry was legal and proper, Respondent's order of discharge was not by way of victimization and that

> the respondent workman had seriously misbehaved and was thus guilty of misconduct, ought not to have interfered with the punishment which was awarded, in the manner it did. This is not a case where the Court could come to the conclusion that the punishment which was to the employee's conduct and his past record."

28. The concept of the term "shockingly disproportionate" is very much known and familiar to Industrial Jurisprudence. The Apex Court in the case of **Hind Construction and Engineering Company's** case reported in **1965 I LLJ, 462,** while dealing with the issue regarding punishment has observed as under:-

> "The Tribunal is not required to consider the propriety or adequacy of the punishment or whether it is excessive or too severe. But, where the punishment is shockingly disproportionate regard being had to be particular conduct and the past record or is such, as no reasonable employer would ever impose in like circumstances, the Tribunal may treat the imposition of such punishment as itself showing victimization or unfair labour practice".

29. In the case of **Kottarakkara Co-operative Urban Bank Ltd. Vs. Sriniwasan, reported in 1991 (I) CLR, 14,** the Kerala High Court has observed as under:-

> "Diluting discipline and condoning in discipline would only destroy motivation. Loyalty to work and discipline are not alien to industrial jurisprudence, misguided sympathy is no more than a maudlin sentiment."

30. The following observations made by the **Gujarat High Court in** the case of **Chanduji Sandhaji Khant Vs. Gujarat State Road Transport Corporation, Himmatnagar,** reported in **1996 (I) CLR 882,** (at page 886) are worthy of reproduction, which read as under:-

> "Any dismissal results in loss of employment and acts detrimental to the interest of family. If this general fall-out of dismissal is to be ground for imposing lesser punishment, then no dismissal will ever be warranted."

31. Section 11-A of the Industrial Disputes Act, 1947 empowers the Court to interfere in the punishment of discharge or dismissal inflicted upon a workman and the Courts can give such other reliefs to the workman including award of any lesser punishment in lieu of discharge or dismissal as the circumstances of the case may require. The Labour Court and Industrial Court while dealing with matters under the Bombay Industrial Relations Act, 1946, are not clothed with such wide powers as under Section

11-A of Industrial Disputes Act in view of the law laid down by the Division Bench of this Court in the case of **Municipal Corporation of Greater Bombay Vs. E. Phadtare and Ors reported in 1994 (I) CLR 301,** the relevant observations; which are at page 308 are reproduced as under:-

> "Mr Deshmukh then submitted that in any event the provisions of section 11-A of the Industrial Disputes Act should be applied and the punishment imposed should be suitably reduced. It is not possible to accept this contention. In the first instance, the provisions of Section 11-A of the Industrial Disputes Act are not applicable in respect of proceedings conducted by the Labour court under Sections 78 and 79 of the Bombay Industrial Relations Act..."

32. This Court in the case of **Madhukar Murari Pawaskar Vs. Hindustan Spinning and Weaving Mills Ltd. reported in 1997 (4) LLN,454,** has followed the above ruling and rejected the Petition of the employee. This Court has observed:-

> "Thus, although the Court may be sympathetic to the plight of the petitioner, yet no relief can be given."

33. Thus, while deciding matters under the

provisions of the Bombay Industrial Relations Act, the Courts can interfere only in the circumstances as laid down by the Supreme Court to hereinabove. None of those circumstances exist in this case on hand. In the aforesaid view of the legal position, the impugned judgment and order of the Labour Court and that of the Industrial Court are liable to be quashed and set aside.

34. In the result, petition is allowed. Rule is made absolute in terms of prayer clause (b), however, subject to the entitlement of the respondent to receive Rs. 50,000/- by way of ex-gratia payment from the petitioner-employer from and out of the amount of Rs. 1,17,671/- deposited by the petitioner under the order of this Court. The petitioner shall be entitled to withdraw the balance amount lying with the Prothonotary and Senior Master of this Court with interest earned thereon subject to deduction of Rs. 50,000/- as indicated herein. In the event, the respondent does not withdraw this amount of Rs. 50,000/- within a period of one month from the date of pronouncement of this

order,the Prothonotary and Sr. Master would be free to invest Rs. 50,000/- with any Nationalized Bank for a period of 37 months and should hold the same in deposit till expiry of the period of investment. However, if the respondent does not withdraw or apply to withdraw this amount,during this period of 37 months, then it would be open for the petitioner-employer to claim this amount with accrued interest thereon since the respondent would forfeit his right to claim Rs. 50,000/- after expiry of the said period of 37 months.

(V.C. DAGA, J)